

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

IN RE RC2 CORP. TOY LEAD PAINT )  
PRODUCTS LIABILITY LITIGATION )

Case No. 07 CV 7184

MDL No. 1893

The Honorable H. Leinenweber

**REAL-PARTY-IN-INTEREST/STATE PLAINTIFFS' MOTION FOR LEAVE TO  
SUPPLEMENT THE RECORD ON "EMERGENCY" MOTION FOR AN INJUNCTION  
PURSUANT TO THE ALL WRITS ACT**

The Real-Party-In-Interest/State Plaintiff, Byron Barrett, respectfully moves this Honorable Court to Supplement the Record on the Emergency Motion for an Injunction. The MDL Plaintiff's Reply brief contains a material misstatement of fact that must be brought to the Court's attention. Furthermore, the State Plaintiff has obtained the affidavit of the Honorable Robert Boharic (ret.), who served as the mediator who helped the State parties reach the State court settlement. State Plaintiffs respectfully request leave to add Judge Boharic's affidavit to the record in these proceedings. In support, the State Plaintiffs state as follows:

**ARGUMENT**

1. The State Plaintiffs have reviewed the MDL Plaintiffs' "Reply in Support of Plaintiff's Emergency Motion for Preliminary Injunction Pursuant to the All Writs Act."
2. Although the State Plaintiffs dispute a number of assertions made in the Reply brief, most of the factual inaccuracies are adequately rebutted by the State Plaintiffs' opposition to the MDL counsels' motion for injunction under the All Writs Act.
3. As MDL counsel has refused (despite State counsel's entreaties) to correct these remaining misstatements, State counsel is obliged to rebut them here in this supplement to the record.

4. The Reply brief states that the MDL Plaintiffs have requested certain discovery from the State Plaintiffs, and that the State Plaintiffs have “refused to produce any of the requested information.” See Reply, at 3, fn. 4.

5. The support for that statement is a letter that State Plaintiffs’ counsel sent to MDL counsel. In that letter, State Plaintiffs’ counsel indicated that the parties could discuss providing the documents at a confidential mediation before Judge Robert Boharic (Ret.) (who mediated the State action) which was held on February 8, 2008.

6. The MDL Plaintiff’s Reply brief implies that State Plaintiffs’ counsel refused to provide the documents at the confidential meeting. This is not true.

7. Attached as Exhibit A is a “Redacted Confidential Settlement Communication,” which was a joint request by the State counsel and the MDL Plaintiffs for RC2 to produce confidential documents.

8. The point is that rather than refusing to tender the documents, State counsel joined the MDL attorneys in requesting RC2 waive confidentiality and produce the relevant documents.

9. Finally, since the filing of the State Plaintiffs’ Response to MDL Plaintiffs’ request for an All Writs Act injunction, Judge Boharic has supplied an affidavit explaining the mediation process employed by the parties to achieve the State court settlement. See “Affidavit of R. Boharic,” a copy of which is attached as Exhibit B.

10. The motion seeking the injunction accused the State Plaintiffs and RC2 of collusion and a “reverse auction.” Judge Boharic’s affidavit contradicts those assertions and should be incorporated into the records of this case.

WHEREFORE, the State Plaintiffs respectfully request leave to supplement the record with the Affidavit of the Honorable Robert Boharic and for such additional relief as this Court deems necessary and just.

Respectfully submitted

BYRON BARRETT, the real party in interest,  
individually, and on behalf of all others similarly  
situated,

/s/Ethan Preston  
One of the Plaintiff's attorneys

State-Appointed Class Counsel

Ethan Preston  
Jay Edelson  
Scott A. Kamber, *pro hac vice pending*  
KAMBEREDELSON LLC  
53 West Jackson Blvd., Suite 1530  
Chicago, Illinois 60604  
(312) 589-6370  
no. 6239287

William M. Audet  
AUDET & PARTNERS, LLP  
221 Main Street, Suite 1460  
San Francisco, CA 94105

State-Appointed Liaison Counsel

Gino L. DiVito  
TABET DIVITO & ROTHSTEIN LLC  
180 North LaSalle Street , Suite 1510  
Chicago, Illinois 60601  
(312) 762 9450